

1                   DECLARATION OF EARLE C. COOLEY

2                   I, Earle C. Cooley, hereby declare:

3                   1. I am an attorney-at-law duly admitted to practice  
4 before the Supreme Judicial Court of the Commonwealth of  
5 Massachusetts, the United States District Court for the District  
6 of Massachusetts, the United States Court of Appeals for the  
7 First Circuit, the United States Court of Appeals for the Ninth  
8 Circuit, and the Supreme Court of the United States. I am Chief  
9 Counsel for the Church of Scientology International ("the  
10 Church") and related entities and individuals. I have personal  
11 knowledge of the matters set forth herein and, if called upon to  
12 do so, could and would competently testify thereto.

13                  2. I am aware that Time attorney Robert P. Marshall has  
14 asserted that the Church and related entities and individuals  
15 have not complained about the false and defamatory article  
16 published by Time magazine concerning the Church in May, 1991.  
17 In fact, nothing could be farther from the truth. As detailed  
18 in this affidavit, Time's publisher and attorney were placed  
19 on notice by the Church of the article's falsehoods even before  
20 the article was published. After publication, the Church's  
21 representatives and attorneys sent correspondence and held  
22 meetings with Time representatives and their attorneys,  
23 attempting to achieve a resolution of Time's malicious  
24 defamation of the Church and related entities and individuals  
25 short of litigation. Time and its attorneys have been placed  
26 on notice that Church counsel are even now preparing litigation  
27 which will be initiated by numerous entities and individuals in  
28 multiple jurisdictions for the defamatory statements contained  
in their May article.

1       3. As early as October, 1990, I wrote to the Editor-in-  
2 Chief of Time Magazine, Jason McManus, concerning the  
3 unprofessional and improper conduct of its reporter, Richard  
4 Behar, in conducting "research" for his subsequent article. In  
5 that letter, I informed Time that Behar was using his Time  
6 affiliation to spread false and malicious charges against the  
7 Church and its former counsel. I specifically documented the  
8 accusations which Behar had made, and the proof that those  
9 accusations were false, and were known by Behar to be false.  
10 Time's response, a brief note from Mr. Marshall, addressed  
11 none of my concerns.

12      4. On December 18, 1990, I responded to Mr. Marshall's  
13 letter providing further information concerning the activities  
14 of Mr. Behar. I informed Mr. Marshall that Mr. Behar was  
15 attempting to interfere in the relationship between Church  
16 counsel and a private investigator, was "generating false  
17 charges, rooted in religious bigotry." The letter further  
18 advised Mr. Marshall that Mr. Behar had contacted a client of  
19 a businessman who is a Scientologist, as well as the Vancouver  
20 Stock Exchange, attempting to make trouble for this businessman  
21 and an associate of his who is also a Scientologist. I even  
22 told Mr. Marshall that these actions were "deliberate and  
23 tortious interferences with the contractual and business  
24 relationships of individual Scientologists, while smearing their  
25 Church and their religion in a campaign of religious bigotry."  
26 Another fact of which I informed Mr. Marshall was the fact that  
27 a main "source" of Behar's information was a convicted felon  
28

1 named Steve Fishman who is currently serving a five-year  
2 sentence on mail fraud and a six-month sentence on obstruction  
3 of justice, which "stemmed from Fishman having paid someone to  
4 pose as a Scientologist and threaten him so that Fishman could  
5 use this phony 'threat' to escape his own serious crimes." I  
6 further informed Mr. Marshall that Behar's request to interview  
7 David Miscavige, Chairman of the Board of Religious Technology  
8 Center, a senior Church corporation, had been rebuffed because  
9 "Mr. Miscavige knew that he would never receive honest, fair  
10 treatment from one who had savaged him with lies in the 1986  
11 FORBES article." I requested a meeting so that the situation  
12 could be addressed by counsel prior to Time's publication of  
13 Behar's article.

14 5. When I received no response to my December 18, 1990  
15 letter, I wrote to Mr. Marshall again on January 24, 1991,  
16 again requesting a prompt meeting to avert the liability which  
17 Time would face if it tortiously published Behar's defamatory  
18 article. I also warned Mr. Marshall that there was substantial  
19 evidence of Behar's malice. I received a reply on January 31,  
20 1991. Mr. Marshall defended Behar's work, suggested that I  
21 contact Behar directly to challenge any of his "facts," and  
22 suggested that I was trying to harass and intimidate rather than  
23 discuss. He also stated that he would be willing to receive  
24 specific information supporting my charges.

25 6. I responded on February 8, 1991 and informed Mr.  
26 Marshall that my prior letters had referenced the "specific  
27 incidents that demonstrate Richard Behar's consistent, malicious  
28 determination to cut the lines of communication between the

1 Church of Scientology and its adherents, to interfere unlawfully  
2 with the ongoing and prospective business relations of  
3 Scientology parishioners, and to embrace the hate campaign of at  
4 least one IRS official who has repeatedly tried without success  
5 to manufacture criminal charges against Church leadership." I  
6 pointed out that Mr. Marshall had not addressed a single one of  
7 these specific charges in his replies. I also told Mr.  
8 Marshall that Behar had referred someone to a member of the Cult  
9 Awareness Network in Miami to obtain aid "in the forcible  
10 extraction of [a] relative from the Church," and was now  
11 "promoting assaults on the mental and physical-well being of  
12 Scientologists."

13       7. After receiving no response to my February 8 letter, on  
14 February 19, I wrote again to Mr. Marshall asking for a meeting  
15 date. After this letter, a meeting took place with Mr.  
16 Marshall. Subsequent to the meeting, on March 26, 1991, Mr.  
17 Marshall wrote and informed me that he had investigated and  
18 concluded that Behar's investigation were "fair and balanced"  
19 and that the only imbalance occurred because representatives of  
20 my clients, other Scientologists, and I refused to talk with  
21 Behar. He also informed me that reporters at Time regularly  
22 express their opinions in order to obtain more information from  
23 people they are interviewing.

24       8. On March 27, I offered to play for Mr. Marshall tapes  
25 of conversations with Behar by investigators who had spoken with  
26 him, so that Mr. Marshall could hear the tone and attitude  
27 expressed by Behar. Mr. Marshall responded on March 28, asking  
28 for copies of the tapes, and on April 9, 1991, I responded with

1 a letter providing copies of conversations between Behar and  
2 private investigators. I also advised him that his statement  
3 that it is "a common practice and entirely acceptable reporting  
4 practice at TIME' for reporters to use their personal  
5 antagonistic opinions and prejudice to color, influence and  
6 condition the responses of so-called sources of information" was  
7 "the equivalent of an admission that malice is the prevailing  
8 standard at TIME."

9 9. On April 12, I advised Mr. Marshall by letter that  
10 Behar had left messages for me, but when I called him back, he  
11 had not returned my calls, apparently being more interested in  
12 being able to say he had called me than in actually talking to  
13 me. I again warned Mr. Marshall that all the evidence pointed  
14 to the conclusion that Behar was writing, and Time planned to  
15 publish

16 a malicious, false and defamatory attack on my  
17 client, Church of Scientology International, as  
18 well as a malicious libel of certain Scientologists  
19 prepared and published in order to interfere with,  
20 manipulate and destroy their business relationship  
21 solely because of their religious affiliation.  
22 Since it appears certain that litigation will  
23 follow TIME's publication of Behar's venom, I hereby  
24 demand on behalf of my client that TIME take control  
25 of and preserve all notes, tape recorded interviews,  
26 transcripts of interviews, out-take material and  
27 other documents related to the preparation and  
28 publication of the Behar "story" so that they will be  
available as evidence in such litigation. Destruction  
of any such documentary material will be considered  
spoliation of evidence for which appropriate legal  
sanctions will be sought.

10. On April 17, I sent Mr. Marshall a letter in which I  
quoted from a transcript of a 1987 interview in which Behar had  
informed an investigator with whom he was speaking that he had  
found "nothing positive" in any of the literature he had seen on

1 Scientology. I asked Mr. Marshall how Time could regard  
2 Behar as unbiased when he had a five-year history of animosity  
3 and bigotry against Scientology, and informed him that based on  
4 Behar's attitude, "[t]he case for malice and religious  
5 persecution is open and shut." I also asked for a confirmation  
6 that Time was preserving the documents as requested in my  
7 April 12 letter.

8 11. On April 18, 1991, Mr. Marshall responded to my April  
9 letter and advised me that Behar's position was totally  
10 supportable and warranted. He also stated that he would not  
11 respond to any further correspondence from me until after  
12 Time's publication of its article. Mr. Marshall further  
13 informed me that he felt I had dredged up ancient history in  
14 referring to the 1987 interview. I responded on April 19 and  
15 advised Mr. Marshall that the intent of providing him with the  
16 1987 statements by Behar was to show the "proof positive that  
17 Mr. Behar is now executing under TIME sponsorship a religiously  
18 bigoted anti-Scientology agenda that he has been pursuing for  
19 the last 5 years." I also told him that if he found "that to be  
20 irrelevant, I am confident that the Court and jury will not." I  
21 again asked for assurances regarding the preservation of  
22 evidence.

23 12. On April 23, 1991, having heard nothing from Mr.  
24 Marshall, I wrote to Harry M. Johnston, III, Vice President and  
25 General Counsel for Communications for Time. I informed him  
26 that Mr. Marshall had ignored the specific concerns expressed  
27 and that he had refused to confirm that evidence relating to the  
28 article would be preserved. I also included copies of all

1 correspondence between Mr. Marshall and me, as well as  
2 providing him with the history of my overall communications with  
3 Mr. Marshall. I never received a response to that letter.

4 13. The state of United States law is such that it is  
5 virtually impossible to enjoin the publication of defamatory  
6 materials. Accordingly, my clients were forced to suffer the  
7 outrageous and deliberate defamatory publication by Time in  
8 this country before they could commence legal action. In  
9 addition, in many jurisdictions in the United States, a litigant  
10 who has been defamed must give the defaming publication an  
11 opportunity to print a retraction of the defamation prior to  
12 filing a legal action against the publisher.

13 14. Immediately after the Time article was published, my  
14 co-counsel, Jonathan Lubell, acting at my direction and that of  
15 our mutual clients, contacted Harry M. Johnston, Time Vice  
16 President and General Counsel, to set up a meeting of Church  
17 officials and Time representatives to discuss the serious and  
18 substantial falsehoods contained in the Time article. Mr.  
19 Lubell demanded that Time magazine print a retraction, and  
20 provide my clients with equal space, in order to avoid  
21 litigation. Similarly, on May 17, 1991, attorney Robert E.  
22 Johnson, sent a letter to Time demanding a full apology and  
23 retraction on behalf of his client, the Church of Scientology  
24 Mission of Fort Lauderdale. Time officials refused to take  
25 any responsive action.

26 15. Further, Church representatives and counsel met with  
27 Time representatives, in an effort to receive equal space from  
28 Time so as to resolve the dispute short of litigation. Time

1 officials refused, although they were presented with substantial  
2 documentation demonstrating the many falsehoods contained in the  
3 article which they had published. Shortly after that meeting,  
4 my co-counsel, Gerald Feffer, sent a letter to Harry Johnston,  
5 Time's General Counsel, documenting fully that reporter Behar  
6 had deliberately overstated the gross income of one of the  
7 church entities by \$499 million. Mr. Johnston's response to  
8 Mr. Feffer's clear presentation of the financial documentation  
9 was to term Mr. Feffer's letter "argumentative and  
10 wrongheaded."

11 16. While I and my co-counsel commenced preparation of a  
12 series of lawsuits to be filed in multiple jurisdictions on  
13 behalf of many of the churches and individuals defamed by the  
14 Time article, my clients commenced a 10-week advertising  
15 campaign in the newspaper, USA Today. Daily ads were printed in  
16 that paper which demonstrated that Time magazine had  
17 deliberately printed falsehoods concerning my clients. A  
18 30-page magazine insert, entitled "The Story that Time Couldn't  
19 Tell," delineated exactly how the false story had come to be  
20 published by Time magazine. A complete 72-page booklet,  
21 titled "Fact vs. Fiction," was published by my clients,  
22 specifically addressing the many defamatory statements contained  
23 in the article, and demonstrating their falsity. This booklet  
24 was given to Time officials.

25 17. In the United States, defamation actions can be  
26 commenced within one year of the defamatory publication. Church  
27 counsel are even now preparing the multiple lawsuits which have  
28 been made necessary by Time's malicious and defamatory

publication. Both Robert Marshall and his superior, Harry Johnston, are certainly aware of this.

18. As to Reader's Digest, on August 1, 1991, Reverend Heber Jentzsch, President of the Church, sent a 56-page letter to the editor assigned to the story that they proposed to print, along with thousands of documents which supported every statement made in the letter. Then, when these materials were ignored by Reader's Digest staff, my co-counsel, Jonathan Lubell, on August 29, 1991, sent a 29-page letter and a 20-page affidavit to the Chairman of Reader's Digest and every member of the board of directors of that publication, describing in detail the false and defamatory statements contained in the Time article, and demonstrating their falsity. This letter put Reader's Digest on notice that they could expect substantial litigation if they reprinted any of the defamatory article. This communication was virtually ignored by Reader's Digest.

19. I can and will provide the Court with true and correct copies of each of the documents which I have cited herein, should that be required.

I declare under the penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of October, 1991.

Earle C. Cooley  
EARLE C. COOLEY